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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,127	10/04/2001	Sanjay Kumar	020431.0776	3685

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EXAMINER

O'CONNOR, GERALD J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/972,127	<b>Applicant(s)</b> Kumar et al.	
	<b>Examiner</b> O'Connor	<b>Art Unit</b> 3627	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on January 10, 2005 and April 28, 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 14-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on October 4, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>IDS Numbers 1-6</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election with traverse of Invention I (Claims 1-13 and 27-29) in the reply filed January 10, 2005 is hereby acknowledged. The traversal is on the ground(s) that the two inventions "are neither independent nor distinct," and that search and examination of both inventions could be performed "without serious burden" on the examiner.
2. Applicant's arguments have been fully considered but are not found persuasive.
3. Regarding the argument that the inventions are not independent because the two inventions are related, the argument is irrelevant, as (1) the Office action made no contention that the inventions were "independent," as, in fact, the word "independent" is simply not even used anywhere in the Office action whatsoever, and (2) the Office action explicitly stated that the inventions were "related" in setting forth the requirement and explaining why the restriction was proper. See § 3, line 2 of the Office action mailed December 9, 2004.
4. Regarding the argument that the inventions are not "distinct" because the two inventions are "related," the Office action setting forth the requirement explained that the inventions are indeed "distinct," precisely because they are "related" as process and apparatus for its practice (different statutory classes of invention). See § 3, lines 1 and 2 of the Office action mailed December 9, 2004.

5. Regarding “serious burden” MPEP § 803 states, in part, under “Guidelines”:

A serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant.

6. As the examiner has indeed made such a *prima facie* showing of serious burden, based upon separate classification, as set forth in the Requirement for Restriction (Office action mailed December 9, 2004), and as applicant has offered no “showing or evidence” in rebuttal to that conclusion, simply an opinion stating a contrary position, applicant’s arguments have been dismissed as merely spurious, amounting to simply a general allegation that a serious burden would not be imposed, without specifically pointing out how the language of the claims fails to comport with the explanation of separate classification provided by the examiner.

7. The restriction requirement is still deemed proper and is therefore made FINAL.

8. Claims 14-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a non-elected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in the reply filed January 10, 2005.

***Drawings***

9. New formal drawings are required in this application because the two sheets of formal drawings submitted by applicant on November 1, 2001 are missing sheet 2.

***Specification***

10. The disclosure is objected to because of the following informalities: the cross-references to related applications (page 1) need to be updated to reflect their correct/proper/current status.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

12. Claims 1-13, and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Gardner et al. (US 5,758,327).

Gardner et al. disclose a computerized fulfillment system associated with a distributed supply chain, comprising: a database operable to store: at least one rule identifying a sourcing constraint associated with a customer; and at least one contract value associated with a current status of a contract involving the customer; and one or more processors collectively operable to: receive an available-to-promise (ATP) request comprising a plurality of request line-items each corresponding to a desired product; generate one or more component ATP requests using at least one rule in the database and based on the request line-items; communicate the component ATP requests to at least one supplier associated with the desired product, the supplier determined according to at least one rule identifying the sourcing constraint; receive a plurality of component quotations from at least one supplier, each component quotation corresponding to a component ATP request and comprising product availability information for one or more corresponding desired products; and generate a quotation for communication using the product availability information and the contract value in the database.

Regarding claim 2, in the fulfillment system of Gardner et al., the one or more processors are further collectively operable to: update the current status of the contract using previous orders placed under the contract; and generate an updated contract value using the updated current status of the contract.

Regarding claim 3, in the fulfillment system of Gardner et al., the one or more processors are further collectively operable to: receive one or more attribute values from the customer, the

attribute values associated with one or more attributes of the desired product; search a product catalog for one or more products having matching attribute values; and retrieve product information associated with at least one matching product from the catalog.

Regarding claim 4, in the fulfillment system of Gardner et al., at least one rule identifies one or more preferred suppliers associated with the customer; and the one or more processors are collectively operable to: communicate the component ATP requests to the preferred suppliers; determine if the preferred suppliers are able to supply a requested quantity of the desired product based on the component quotations; and communicate component ATP requests to additional suppliers if the preferred suppliers are unable to supply the requested quantity of the desired product.

Regarding claim 5, in the fulfillment system of Gardner et al., the database is further operable to store at least one second rule associated with one of the suppliers; at least one second rule identifies a validity period for component quotations supplied by the supplier; and the one or more processors are collectively operable to generate the component ATP requests and the quotation using the rule associated with the customer and the second rule associated with the supplier.

Regarding claim 6, in the fulfillment system of Gardner et al., the database is operable to store a plurality of rules; and the one or more processors are further collectively operable to select one or more of the rules for generating the component ATP requests based on contents of the ATP request.

Regarding claim 7, in the fulfillment system of Gardner et al., the one or more processors are further collectively operable to: identify a plurality of available optional components associated with the desired product; identify valid combinations of the optional components; and display the valid combinations of the optional components to the customer.

Regarding claim 8, in the fulfillment system of Gardner et al., the one or more processors are further collectively operable to generate a sourcing plan using the product availability information and at least one rule, the sourcing plan identifying one or more suppliers and a quantity of the desired product reserved from each identified supplier.

Regarding claim 9, in the fulfillment system of Gardner et al., the one or more processors are further collectively operable to iteratively generate a sourcing plan when a previous sourcing plan fails to satisfy the corresponding rules in the database.

Regarding claim 10, in the fulfillment system of Gardner et al., the contract value comprises a discount available to the customer from one or more of the suppliers.

Regarding claim 11, in the fulfillment system of Gardner et al., the database is further operable to store at least one second rule associated with a logistics provider; and the second rule identifies one or more delivery services provided by the logistics provider and available to the customer.

Regarding claim 12, in the fulfillment system of Gardner et al., the fulfillment system operates in an electronic marketplace; the one or more processors are collectively operable to receive at least one ATP request through a web-based user interface using Hypertext Transfer



Protocol (HTTP); and the one or more processors are collectively operable to communicate the quotation using electronic mail.

Regarding claim 13, in the fulfillment system of Gardner et al., the one or more processors are collectively operable to receive at least one ATP request using at least one of Hypertext Transfer Protocol (HTTP), Simple Network Management Protocol (SNMP), Extensible Markup Languages (XML), Electronic Data Interchange (EDI) Value Added Network (VAN), and electronic mail.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to the disclosure.
14. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(571) 272-6787**, and whose facsimile number is **(571) 273-6787**.
15. The examiner can normally be reached weekdays from 9:30 to 6:00.
16. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Alexander Kalinowski, can be reached at **(571) 272-6771**.

17. Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (703) 872-9306.** Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

June 24, 2005

 (6-24-05)

Gerald J. O'Connor

Primary Examiner

Group Art Unit 3627